

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANDREW LINDSTROM,

Plaintiff,

vs.

NEVADA STATE MILITIA (NEVADA
NATIONAL GUARD),

Defendant.

Case No. 3:24-cv -00152-ART-CSD

ORDER ON PLAINTIFF'S MOTION
FOR INJUNCTION, RESTRAINING
ORDER PETITION, AND OBJECTION
TO MAGISTRATE JUDGE ORDER
(ECF Nos. 17, 56, 78)

Plaintiff Andrew Lindstrom brings this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). Before the Court are Plaintiff's motion for an injunction (ECF No. 17), Plaintiff's restraining order petition (ECF No. 56) and Plaintiff's objection to Magistrate Judge Denney's order denying Plaintiff's motion for his recusal (ECF No. 78). The Court will address each motion in turn. For the reasons set forth below, the Court denies Plaintiff's motions.

I. Motion for Injunction (ECF No. 17)

Plaintiff requests an injunction against Kevin Remus, prohibiting him from contacting any potential witnesses in this matter and referring his conduct to the Nevada State Bar and law enforcement officials. Plaintiff alleges that Mr. Remus is the State Judge Advocate of the Nevada National Guard, and that he sent emails to Christopher Tinsman, who is a potential witness in this action as well as other actions filed by Plaintiff and Ms. Felcia Cavanaugh, in an attempt to deter Mr. Tinsman from testifying. Plaintiff alleges that in doing so, Mr. Remus has violated the Nevada Rules of Professional Conduct and 18 U.S.C. § 1512(d).

A. Legal Standard

A party seeking a preliminary injunction must demonstrate (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm if preliminary relief

1 is not granted, (3) the balance of equities is in their favor, and (4) an injunction
2 is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555
3 U.S. 7, 20 (2008). The analysis for a temporary restraining order is “substantially
4 identical” to that of a preliminary injunction. *Stuhlbarg Intern. Sales Co, Inc. v.*
5 *John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

6 For a court to have the power to grant a preliminary injunction or
7 temporary restraining order, “there must be a relationship between the injury
8 claimed in the motion for injunctive relief and the conduct asserted in the
9 underlying complaint.” *Pacific Radiation Oncology, LLC v. Queen's Medical Center*,
10 810 F.3d 631, 636 (9th Cir. 2015). “The relationship between the preliminary
11 injunction and the underlying complaint is sufficiently strong where the
12 preliminary injunction would grant ‘relief of the same character as that which
13 may be granted finally.’” *Id.* (quoting *De Beers Consol. Mines v. United States*, 325
14 U.S. 212, 220 (1945)). “Where the motion for preliminary injunction is related to
15 new allegations of misconduct—distinct from the allegations at issue in the
16 complaint—such a motion must be denied.” *Iden v. Stark*, No. 3:22-CV-00121-
17 MMD-CLB, 2022 WL 18231858, at *3 (D. Nev. Nov. 3, 2022), *report and*
18 *recommendation adopted*, 2023 WL 158670 (D. Nev. Jan. 11, 2023); *see also*
19 *Harris v. Gittere*, No. 3:22-CV-00042-ART-CSD, 2024 WL 4278489, at *2 (D. Nev.
20 Sept. 24, 2024), *reconsideration denied*, 2025 WL 467596 (D. Nev. Feb. 11, 2025).

21 Plaintiff filed this action under FOIA, requesting the following relief: “Direct
22 the Nevada State Militia to hand over Federal documents they are in direct
23 possession of and have been directed to turn over by the National Guard Bureau,
24 the Federal agency who has legal custody of the documents.” (ECF No. 3 at 4.)
25 Plaintiff’s request for an injunction prohibiting Mr. Remus from contacting
26 potential witnesses and referring his conduct to the state bar and law
27 enforcement officials is not sufficiently connected to the underlying relief he
28 seeks, as it is not grant ‘relief of the same character as that which may be granted

1 finally.” *Pacific Radiation Oncology*, 810 F.3d at 636 (quoting *De Beers*, 325 U.S.
2 at 220). Rather, Plaintiff’s motion is based upon new allegations of misconduct
3 unrelated to his underlying claim. The Court, therefore, cannot issue an
4 injunction on this basis. Accordingly, Plaintiff’s motion for an injunction is
5 denied.

6 The Court notes that issues of alleged harassment or interference with
7 witnesses may be addressed in a motion for sanctions. *See e.g. InjuryLoans.com,*
8 *LLC v. Buenrostro*, No. 2:18-CV-01926-GMN-VCF, 2020 WL 9160827 (D. Nev.
9 Sept. 28, 2020).

10 **II. Restraining Order Petition (ECF No. 56)**

11 Plaintiff’s petition for a restraining order requests that the Court issue an
12 order prohibiting Defendant from contacting Plaintiff or coming within physical
13 proximity of him and prohibiting *ex parte* contact with witnesses in this matter.
14 Plaintiff alleges that he has continued to suffer harassment, intimidation, and
15 retaliation by Defendant, including harassment of potential witnesses, vandalism
16 of Plaintiff’s car, cyberstalking of Plaintiff, and a potential arson of Plaintiff’s
17 house. While such allegations, if true, present serious concerns, they are not
18 properly the focus of a restraining order in this case.

19 Like Plaintiff’s motion for an injunction, addressed above, Plaintiff’s request
20 for a temporary restraining order is based upon new allegations of misconduct
21 that do not relate to his underlying claim. The relief that Plaintiff requests is not
22 “relief of the same character as that which may be granted finally.” *Pacific*
23 *Radiation Oncology*, 810 F.3d at 636 (quoting *De Beers*, 325 U.S. at 220). For the
24 same reasons, the Court cannot issue a temporary restraining order on this basis,
25 and Plaintiff’s motion is denied. Again, issues of alleged harassment or
26 interference with witnesses may be addressed in a motion for sanctions.

27 **III. Objection to Magistrate Judge Order (ECF No. 78)**

28 Plaintiff filed a motion for the recusal of Magistrate Judge Denney in this

1 action. (ECF No. 59.) Plaintiff argued that Judge Denney should recuse himself
 2 because he is a former United States Attorney in Nevada and a former Army JAG
 3 Officer. Plaintiff also alleges that Judge Denney “more than likely practiced law
 4 with opposing counsel Patrick Rose,” which requires him to recuse himself.
 5 Plaintiff states that Judge Denney has demonstrated bias against him in this
 6 action, has personal knowledge of the evidentiary facts, and has issued adverse
 7 rulings against him.

8 **A. Review of Magistrate Judge Orders**

9 Magistrate judges are authorized to resolve pretrial matters subject to
 10 district court review under a “clearly erroneous or contrary to law” standard. 28
 11 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a); LR IB 3-1(a). A district court
 12 will thus defer to a magistrate judge’s nondispositive order unless it is clearly
 13 erroneous or contrary to law. *Grimes v. City & Cnty. of San Francisco*, 951 F.2d
 14 236, 240 (9th Cir. 1991). “A finding is clearly erroneous when although there is
 15 evidence to support it, the reviewing body on the entire evidence is left with the
 16 definite and firm conviction that a mistake has been committed.” *24-7 Grp. of*
 17 *Companies, Inc. v. Roberts*, No. 3:13-CV-00211-MMD-WGC, 2014 WL 12707232,
 18 at *2 (D. Nev. Nov. 21, 2014); (quoting *United States v. Ressam*, 593 F.3d 1095,
 19 1118 (9th Cir. 2010)). “A decision is ‘contrary to law’ if it applies an incorrect legal
 20 standard or fails to consider an element of the applicable standard.” *Id.* (quoting
 21 *Conant v. McCoffey*, C97-0139, 1998 WL 164946, at *2 (N. D. Cal. Mar. 16,
 22 1998)).

23 **B. Review of Judge Denney’s Order Denying Motion for Recusal**

24 Two statutes address recusal of federal judges. Under 28 U.S.C. § 144:
 25 “Whenever a party to any proceeding in a district court makes and files a timely
 26 and sufficient affidavit that the judge before whom the matter is pending has a
 27 personal bias or prejudice either against him or in favor of any adverse party,
 28 such judge shall proceed no further therein, but another judge shall be assigned

1 to hear such proceeding.” Under 28 U.S.C. § 455, “recusal is appropriate where
2 ‘a reasonable person with knowledge of all the facts would conclude that the
3 judge’s impartiality might reasonably be questioned.’” *Yagman v. Republic Ins.*,
4 987 F.2d 622, 626 (9th Cir. 1993) (quoting *In re Yagman*, 796 F.2d 1165, 1179
5 (9th Cir. 1986)). Therefore, recusal is justified either by actual bias under § 144
6 or the appearance of bias under § 455. *Id.*

7 Judge Denney denied the motion for recusal under 28 U.S.C. § 144 first
8 because Plaintiff failed to submit an affidavit showing bias or prejudice as
9 required by the statute. Additionally, Judge Denney found that the allegations
10 Plaintiff has set forth do not include facts sufficient to demonstrate actual bias
11 or prejudice. Judge Denney stated that while he was an AUSA in the District of
12 Nevada and a judge advocate in the Army, he never worked with the AUSA on a
13 FOIA case; he does not personally know the AUSA in this action and has not
14 worked with him in the past; he does not have personal knowledge of the facts in
15 this case; and he has never served in the Nevada National Guard or worked with
16 lawyers from the Guard on legal matters while in the Army reserve. Judge
17 Denney’s order also found that Plaintiff’s allegation that adverse rulings were a
18 basis for his recusal was insufficient to show bias, citing *Liteky v. U.S.*, 510 U.S.
19 540, 555 (1994) (“judicial rulings alone almost never constitute a valid basis for
20 a bias or partiality motion”) (citation omitted). The allegations Plaintiff brings
21 regarding Judge Denney’s bias are therefore insufficient to demonstrate actual
22 bias or prejudice under 28 U.S.C. § 144.

23 For the same reasons, Judge Denney correctly denied the motion under 28
24 U.S.C. § 455. As Judge Denney noted, “Matters that are not ordinarily sufficient
25 to require a § 455(a) recusal include: “[r]umor, speculation, beliefs, conclusions,
26 innuendo, suspicion, opinion, and similar non-factual matters.” *Clemens v. U.S.*
27 *Dist. Ct.*, 428 F.3d 1175, 1179 (9th Cir. 2005). Plaintiff’s speculation that Judge
28 Denney is biased is not sufficient to demonstrate that recusal is warranted under

1 28 U.S.C. § 455.

2 In sum, while Plaintiff may be unsatisfied with Judge Denney's rulings, this
3 is not a basis for recusal. The facts Judge Denney presented regarding his lack
4 of personal knowledge, personal relationships, or connections to this case
5 demonstrate that recusal is not warranted. Judge Denney's decision is therefore
6 not clearly erroneous or contrary to law.

7 **IV. Conclusion**

8 It is therefore ordered that Plaintiff's motion for an injunction (ECF No. 17)
9 is DENIED.

10 It is further ordered that Plaintiff's petition for a restraining order (ECF No.
11 56) is DENIED.

12 It is further ordered that Plaintiff's objection to Judge Denney's order
13 denying Plaintiff's motion for recusal (ECF No. 78) is OVERRULED.

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15 Dated this 28th day of February 2025.

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18 ANNE R. TRAUM
19 UNITED STATES DISTRICT JUDGE
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